

REMARKS/ARGUMENTS

The Office Action of January 12, 2009, has been carefully reviewed and these remarks are responsive thereto. No new matter has been added. Claims 1-24 are pending upon entry of the present paper. Reconsideration and allowance of the instant application are respectfully requested.

Rejections Under 35 U.S.C. § 101

Claims 8-14 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

Without acquiescing to the rejection, Applicant has amended claims 8-14 to recite a storage computer-readable medium. In view of the amendments, withdrawal of the section 101 rejection is respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2006/0010469 to Reynolds et al. ("Reynolds"), in view of U.S. Patent No. 5,812,123 to Rowe et al. ("Rowe"). Applicant respectfully traverses.

Independent claim 1 recites, *inter alia*, "determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program."

At pages 7-8 of Applicant's Request For Reconsideration dated March 20, 2008, Applicant discussed the reasons why one of ordinary skill in the art would not have had an apparent reason to modify Reynolds to include the disclosures in Rowe. In short, and as discussed, the purpose of Reynolds is to overcome the limitations associated with passive television program guides. See Reynolds at paragraphs [0003]-[0004]. More specifically, Reynolds at paragraphs [0003]-[0004] describes the frustration a user experiences with respect to passive guides due to being forced to wait until a list of program listings scrolls to display

listings for a channel or time that a user is interested in, and that users of passive guides have no way of controlling how quickly or how often listings appear. It is against this background/backdrop that the disclosure of Reynolds is set against.

The Office Action at pages 3-4 (“Response to Arguments”) cites to Reynolds at paragraphs [0088]-[0093], contending that there is nothing in Reynolds that forecloses combining the program guide(s) described therein with other program guides.

As discussed at page 7 of Applicant’s “Amendment And Request For Reconsideration” filed November 3, 2008, even assuming (without admitting) that paragraphs [0003]-[0004] of Reynolds does not rise to a level of “teaching away,” combining Rowe’s alleged disclosure of determining that a first broadcasted program is selected for at least a time grater than a predetermined threshold with Reynolds would frustrate Reynolds’ intended purpose. See MPEP § 2143.01 (V.). Accordingly, Applicant submits that one skilled in the art would not have had an apparent reason to modify Reynolds in the manner suggested in the Office Action.

In response to Applicant’s remarks regarding the Office’s oversimplification of obviousness under *KSR* and *Ortho*¹, the Office Action at pages 5-6 discusses *KSR* and *Ortho* and concludes with respect to the rejection of claim 1 that there is no reason why two program guides (particularly two interactive program guides) cannot be combined as found in the prior art. Applicant reminds the Office that the mere fact that references can be combined or modified may not be sufficient to establish a *prima facie* case obviousness. See MPEP § 2143.01 (III.). Moreover, the Office bears the burden of factually supporting any *prima facie* conclusion of obviousness, and Applicant is under no obligation to submit evidence of nonobviousness when the Office fails to produce a *prima facie* case of obviousness. See MPEP § 2142. Given Applicant’s above remarks regarding the modification of Reynolds with Rowe as frustrating the intended purpose of Reynolds, Applicant respectfully submits that even assuming (without admitting) that Rowe and Reynolds might otherwise have been properly combinable, that the combination of references is improper for at least the reasons discussed above.

Since the combination of references is improper, and neither Reynolds nor Rowe taken in the singular discloses all of the features of claim 1, claim 1 is allowable.

¹ See pages 7-8 of Applicant’s “Amendment And Request For Reconsideration” filed November 3, 2008 for a fuller discussion of *KSR* and *Ortho*.

Moreover, with respect to the above-noted features as recited in claim 1, claim 1 requires displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program. At page 8 of the Request For Reconsideration dated March 20, 2008, Applicant discussed the failure of the references to disclose such features. Applicant incorporates those remarks herein by way of reference.

The Office Action at page 4 ("Response to Arguments") acknowledges Applicant's remarks in this respect, and contends that Reynolds at paragraphs [0090]-[0093], [0096], and Figures 3a (82, 84), 3b (87, 91), and 6 (91) discloses the recited features. Applicant respectfully disagrees that the cited passages of Reynolds (or any passage of Reynolds, for that matter) describes the above-noted features. Instead, Reynolds at paragraphs [0089] and [0090] merely discloses that a hybrid guide may be generated by an interactive guide using an overlay technique to overlay program listings display area, text display area, graphic display areas, video display areas, or interactive feature areas *onto a passive guide display screen*. Even assuming, without conceding, that the passive guide constitutes a background area, nowhere does Reynolds teach or suggest displaying content selected in the interactive guide in the passive guide display screen, wherein the selected content is overlapped by information related to a first broadcasted program. Indeed, the passive guide display corresponds to a specific and passive channel in a broadcast lineup. See, e.g., Reynolds at paragraph [0088]. Thus, the passive guide display would not change based on what is selected in the interactive guide. Rowe is similarly deficient and thus does not cure the above noted deficiencies of Reynolds. Accordingly, claim 1 is allowable for this additional reason.

Notwithstanding whether a combination of Reynolds and Rowe is proper, Applicant maintains that the combination of references fails to teach or suggest features related to displaying a selected content in a background area of an interactive programming guide, wherein the selected content is overlapped by information related to a first broadcasted program as required by claim 1 for at least the foregoing reasons.

While the Office's remarks at page 4 of the Office Action acknowledge Applicant's remarks regarding claim 1 and the above-noted features related to displaying a selected content in a background area of an interactive programming guide, wherein the selected content is

overlapped by information related to a first broadcasted program, the Office's remarks still fail to fully address the substance of Applicant's remarks regarding the deficiencies of Reynolds (and Rowe). Instead, the Office's remarks merely restate what Reynolds allegedly discloses without relating those alleged disclosures to the above remarks. Applicant maintains that Reynolds (and Rowe) fail to teach or suggest all of the features of claim 1, and that claim 1 is further allowable for at least the foregoing additional reasons.

Independent claims 8, 15, and 23 recite features similar to those described above with respect to claim 1. Claims 8, 15, and 23 are therefore allowable for at least the same reasons discussed above with respect to claim 1.

Claims 2-7, 9-14, 16-22, and 24, which each depend from at least one of independent claims 1, 8, 15, and 23, are allowable for at least the same reasons as their respective base claims, and further in view of the additional advantageous features recited therein.

CONCLUSION

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. Should the Examiner find that a telephonic or personal interview would expedite passage to issue of the present application, the Examiner is encouraged to contact the undersigned attorney at the telephone number indicated below.

If any additional fees are required or if an overpayment has been made the Commissioner is authorized to charge or credit Deposit Account No. 19-0733. Applicant looks forward to passage to issue of the present application at the earliest convenience of the Office.

Respectfully submitted,

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